IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G.CHANDRAIAH

WRIT PETITION NO : 10518 of 1993

Between:

1 Mrs.Amtul Raheem, W/o. Late M.M.Shah Khan.
R/o. Warangal.
2 Mohd.Akmal Shah Khan, S/o. Late M.M.Shah Khan.
R/o. Hanamkonda, Warangal.
3 Ajmal Shah Khan, S/o. M.M.Shah Khan.
R/o. Hanamkonda, Warangal.

..... PETITIONER(S)

AND

1 A.P.State Wakf Board, Rep. Secretary.
King Koti Road, Hyderabad.
2 President, Managing Committee of Masjid Khurd Subedari,
Hanamkonda, Warangal.
3 Mohd.Sharfuddin,
Postal Colony, Hanamkonda, Warangal.
4 Mohd.Saleemuddin,
C.I.of Police, P.S.Subedari, Hanamkonda, Warangal.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ more in the nature of a writ of Mandamus or any other appropriate writ order or direction declaring the action of the 1st respondent in cancellation of allotment of land of 1269 sq.yards in Survey Nos.450 and 451 Vadeepally Village, Subedari, Hanamkonda, Warangal District through proceedings dated 10/01/1986 as illegal, arbitrary and unconstitutional and also to declare the consequential order of the 2nd respondent in allotting the same land in favour of the 3rd respondent as ultravires its powers and violative of section 36-A of the Wakf Act, 1954 and direct the respondents to act in accordance with law.

Counsel for the Petitioner: MR.V.VENKATARAMANA

Counsel for the Respondent No.1: MR.A.M.QURESHI, S.C. for Wakf Board

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the 1st respondent in cancelling the allotment of land of 1269 sq. yards in S.Nos.450 and 451 situated in Vaddepally village, Subedari, Hanmakonda, Warangal District through proceedings dated 10.1.1986 as illegal and arbitrary and in violation of principles of natural justice and also to declare the consequential order, dated 30.3.1990 passed by the 2nd respondent in allotting the same land in favour of the 3rd respondent as bad and in violation of Section 36-A of the Wakf Act, 1954.

The petitioners also filed W.P.M.P.No.13300 of 1993 to direct the respondents not to take any coercive steps from dispossessing the petitioners from the land of 1269 sq. yards in Sy.Nos.450 and 451 situated at Vaddeepally village, subedari, Hanmakonda, Warangal District. On 27.7.1993, this Court granted interim direction for stay of dispossession of the petitioners from the lands in Sy.Nos.450 and 451 of Vaddepally village, Subedari, Hanmakonda, Warangal District to the extent it is in the occupation of the petitioners.

The case of the petitioners is that initially the land of an extent of Ac.6.1 cents in S.Nos.450 and 451 situated in Vadeepally village, Hanmakonda, Warangal District was divided into 21 plots and was leased out to the occupants on Nuzool in 1342 Fasli. Out of these 21 plots, the land admeasuring 1269 sq. yards was allotted to Mr.Afzal Shah Khan, who was the brother of the 1st petitioner's husband.

Thereafter, the 2nd respondent transferred the said land from Afzal Shah Khan to Mr.M.M.Shah Khan, who was the husband of the 1st petitioner and father of the petitioners 2 and 3 vide proceedings, dated 9.9.1968 wherein it was made clear that M.M.Shah Khan can make house constructions in that land after obtaining permission from the Municipality. The said land was divided into four pieces by M.M.Shah Khan for the purpose of constructing four houses for his four sons. Accordingly, in 1986, he applied for permission from the Municipality, Warangal for construction of houses. After obtaining permission, he completed construction of only two houses in 1987 which are in possession and enjoyment of the 1st petitioner's family. When the 2nd respondent tried to occupy the front vacant portion of the land, M.M.Shah Khan filed O.S.No.165 of 87 on the file of II Additional District Munsif, Warangal seeking permanent injunction restraining the 2nd respondent from interfering with the peaceful possession of the plaintiffs therein. M.M.Shah Khan died in March, 1988. The suit was decreed on 18.2.1993 and injunction was granted against the 2nd respondent herein. When the 3rd respondent, being an individual, tried to interfere with the possession and enjoyment of the subject land, the petitioners filed O.S.No.354 of 1992, and the trial Court granted injunction in I.A.No.737 of 1992 in O.S.No.354 of 1992 in favour of the petitioners. The 1st respondent-A.P. State Wakf Board, passed orders, dated 10.1.1986 cancelling the allotment of the land of 1414 sq. yards in favour of M.M.Shah Khan on the ground that he failed to construct houses on the land within six months from the date of the agreement. Thereafter, the 2nd respondent passed an order, dated 30.3.1990 allotting an extent of 330 sq.yards of land out of 1269 sq. yards in favour of the 3rd respondent. The 3rd respondent preferred C.M.A.No.43 of 1992 against I.A.No.737 of 1992 on the file of the Addl. District Judge, Warangal and became unsuccessful in it. Aggrieved by the same, he filed C.R.P.No.3190 of 1992 before this Court, and this Court, by an order, dated 16.7.1993, allowed the C.R.P. on the ground that the cancellation of allotment order and the

consequent allotment of the land in favour of the 3rd respondent were never challenged by the petitioners. The impugned order, dated 10.1.1986 was passed without issuing any notice to the petitioners. Hence, this writ petition has been filed.

The 1st respondent filed counter affidavit *inter alia* denying the averments made in the affidavit filed in support of the writ petition. The 3rd respondent filed sworn affidavit through his G.P.A. stating that the 1st respondent cancelled the allotment of land by Proceedings No.97/Tel-II/WGL/82, dated 10.1.1986 as the allottee did not comply with the conditions of constructing the houses within 6 months. Thereafter, the 2nd respondent allotted an extent of 330 sq. yards of land in his favour, and he applied to the Municipality for permission to construct houses. After obtaining permission, he commenced construction work.

Heard the learned counsel for the petitioners and the learned standing counsel for the 1st respondent and perused the material on record including the affidavit filed by the 3rd respondent in the writ petition.

The main contention of the learned counsel for the petitioners is that the impugned order, dated 10.1.1986 issued by the 1st respondent does not show that either M.M.Shah Khan or the petitioners have been issued any notice before cancellation of the allotment of land which is in gross violation of principles of natural justice. Therefore, he seeks appropriate directions to the respondents.

The learned standing counsel for the 1st respondent has contended by agreeing to the fact that the impugned order, dated 10.1.1986 was issued without there being any notice either to M.M.Shah Khan or to the petitioners, and therefore, he seeks liberty to issue notices to the petitioners.

It is stated that the petitioners have been in peaceful possession and enjoyment of 1269 sq. yards of land in S.Nos.450 and 451 situated in

Vaddepally village, Hanmkonda, Warangal District for the last four decades whereas the said fact was disputed by the 3rd respondent. The main grievance of the petitioners is that either the order, dated 10.1.1986 cancelling the allotment of 1269 sq. yards of land in favour of the 1st petitioner's husband or the consequential order, dated 30.3.1990 allotting part of that land in favour of the 3rd respondent was not communicated to the petitioners. The impugned order, dated 10.1.1986, admittedly, is in the nature of final order without any notice. It is admitted by the learned standing counsel for the 1st respondent that no notice was issued either to the 1st petitioner's husband or to the petitioners before the impugned order came to be passed. Inasmuch as the impugned order was not preceded with any notice to the affected parties, the same suffers from the vice of violation of principles of natural justice. Principles of natural justice demand that before any order adverse to a party is passed, he should be issued notice and provided an opportunity to put forth his version. Since the impugned order was not preceded with any notice, the same cannot be sustained.

Having regard to the facts and circumstances of the case, the impugned order, dated 10.1.1986 passed by the 1st respondent and also the consequential order, dated 30.3.1990 passed by the 2nd respondent are quashed and set aside, and the 1st respondent is directed to issue notices to the petitioners and the 3rd respondent and pass appropriate orders after considering their objections that may be filed by the petitioners and the 3rd respondent. Till the final orders are passed, status-quo be maintained with regard to the possession of the property.

The writ petition is disposed of in terms of the above direction. No costs.

(G. CHANDRAIAH, J.)

15th July, 2005

bcj

To

1 The Secretary, A.P.State Wakf Board,
King Koti Road, Hyderabad.
2 President, Managing Committee of Masjid Khurd Subedari,
Hanamkonda, Warangal.
3. Two C.D. copies.